

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CARNEGIE MELLON UNIVERSITY,  
Plaintiff,

v.

92cv1554

**Electronically filed**

ANSEL M. SCHWARTZ, ESQUIRE and  
COHEN & GRIGSBY, P.C.,  
Defendants,

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ANSEL M. SCHWARTZ,  
Third-Party Plaintiff,

v.

UNITED STATES OF AMERICA,  
Third-Party Defendant.

**MEMORANDUM OPINION**

On May 4, 1995, Magistrate Judge Robert C. Mitchell issued a Report and Recommendation (“R&R”) in this professional malpractice case brought by Carnegie Mellon University (“CMU”) against its former patent attorney and law firm, based on defendant attorney's allegedly negligent filing of disclaimer with the United States Patent and Trademark Office, which recommended that summary judgment be entered in favor of defendants and against the plaintiff. This Court adopted the R&R as the opinion of the Court and entered judgment in favor of defendants on July 7, 1995 (doc. no. 95).

On appeal, the United States Court of Appeals for the Third Circuit vacated this Court's order and remanded for further proceedings. *Carnegie Mellon University v. Schwartz*, 105 F.3d 863 (3d Cir. 1997). Declining “to decide these difficult questions in a factual vacuum,” the Court of Appeals directed this Court to await the outcome of the related patent infringement proceedings in the United States District Court for the Northern District of California before

ruling on the professional malpractice claims and the cross claims against the United States.<sup>1</sup>

The Court has been “awaiting” the result in California since then, and on March 22, 2007, the United States District Court for the Northern District of California issued a final judgment against CMU on its patent infringement claims. That final judgment is consistent with this Court’s previous ruling, and as there are no longer any pending related proceedings in the California patent infringement case, this Court will readopt the R&R of Magistrate Judge Mitchell dated July 7, 1995, and will enter summary judgment in favor of defendants.

s/ Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

cc: all ECF registered counsel  
United States Magistrate Judge Mitchell

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<sup>1</sup> Specifically, the Court stated:

[W]e believe it best to hold this negligence action in abeyance until we can determine whether CMU suffered an “actual loss” as a result of intervening rights arising from the disclaimer. We will, therefore, vacate the district court's order granting summary judgment to the defendants and dismissing the complaint against the third party defendant, and we will remand the case to the district court with instructions to proceed in a manner not inconsistent with this opinion. We recommend that the court wait for an outcome in the California infringement action and in any other relevant infringement actions currently pending before it rules on the professional negligence claim against Schwartz and C & G and the crossclaim against the United States. In coming to the above conclusion, we are certainly cognizant of the fact that appellees are entitled to a final disposition of the charges against them. This ruling should not be used to forestall prompt resolution of the negligence claim once the issue of actual loss is clarified.

*Carnegie Mellon University v. Schwartz*, 105 F.3d 863, 867-68 (3d Cir. 1997).